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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KHALID ELFOULKI and KETEVAN
CHICHINADZE, on behalf of all other persons
similarly situated,

Plaintiff,

-against-

BRANNONS SANDWICH SHOP LLC d/b/a
BRANNONS and ANEMACORE LLC, d/b/a
DONATELLA'S and RONALD BRANNON and
DONATELLA ARPAIA, in their individual and
professional capacities,

Defendants.

Case No. 14-CV-5964(PKC)

ECF CASE

ANSWER

Defendants Brannons Sandwich Shop, LLC d/b/a Brannons, Anemacore, LLC d/b/a Donatella's, Ronald Brannon and Donatella Arpaia (Collectively referred to as "Defendants"), by and through their attorneys, Sacco & Fillas, LLP, answer the Complaint as follows:

In response to all non-numbered paragraphs, and each and every substantive allegation of the Complaint, Defendants deny that they violated the law and/or that they harmed Plaintiffs in any way.

NATURE OF THE ACTION

1. The allegations contained in paragraph 1 of the Complaint set forth legal conclusions to which no response is required, and to the extent a further response is deemed necessary, deny each and every allegation contained in paragraph 1 of the Complaint.

2. Defendants deny each and every allegation contained in paragraph 2 of the Complaint.

3. Defendants deny each and every allegation contained in paragraph 3 of the Complaint.

4. Defendants deny each and every allegation contained in paragraph 4 of the Complaint.

5. The allegations contained in paragraph 5 of the Complaint set forth legal conclusions to which no response is required, and to the extent a further response is deemed necessary, deny each and every allegation contained in paragraph 5 of the Complaint.

6. The allegations contained in paragraph 6 of the Complaint set forth legal conclusions to which no response is required, and to the extent a further response is deemed necessary, deny each and every allegation contained in paragraph 6 of the Complaint.

JURISDICTION AND VENUE

7. The allegations contained in paragraph 7 of the Complaint set forth legal conclusions to which no response is required, and to the extent a further response is deemed necessary, deny each and every allegation contained in paragraph 7 of the Complaint.

8. The allegations contained in paragraph 8 of the Complaint set forth legal conclusions to which no response is required, and to the extent a further response is deemed necessary, deny each and every allegation contained in paragraph 8 of the Complaint.

THE PARTIES

9. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 9 of the Complaint and therefore deny the same.

10. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 10 of the Complaint and therefore deny the same.

11. Defendants admit the allegations contained in paragraph 11 of the Complaint.

12. Defendants admit the allegations contained in paragraph 12 of the Complaint.

13. Defendants deny each and every allegation contained in paragraph 13 of the Complaint.

14. Defendants deny each and every allegation contained in paragraph 14 of the Complaint.

15. Defendants deny each and every allegation contained in paragraph 15 of the Complaint.

COLLECTIVE ACTION ALLEGATIONS

16. The allegations contained in paragraph 16 of the Complaint set forth legal conclusions to which no response is required, and to the extent a further response is deemed necessary, deny each and every allegation contained in paragraph 16 of the Complaint.

17. Defendants deny each and every allegation contained in paragraph 17 of the Complaint.

18. Defendants deny each and every allegation contained in paragraph 18 of the Complaint.

19. Defendants deny each and every allegation contained in paragraph 19 of the Complaint.

RULE 23 CLASS ALLEGATIONS

20. The allegations contained in paragraph 20 of the Complaint set forth legal conclusions to which no response is required, and to the extent a further response is deemed necessary, deny each and every allegation contained in paragraph 20 of the Complaint.

21. The allegations contained in paragraph 21 and its subparts of the Complaint set forth legal conclusions to which no response is required, and to the extent a further response is deemed necessary, deny each and every allegation contained in paragraph 21 of the Complaint.

22. Defendants deny each and every allegation contained in paragraph 22 of the Complaint.

Numerosity

23. Defendants deny each and every allegation contained in paragraph 23 of the Complaint.

Common Questions of Law and/or Fact

24. Defendants deny each and every allegation contained in paragraph 24 of the Complaint.

Typicality of Claims and/or Defenses

25. Defendants deny each and every allegation contained in paragraph 25 of the Complaint.

Adequacy

26. Defendants deny each and every allegation contained in paragraph 26 of the Complaint.

Superiority

27. Defendants deny each and every allegation contained in paragraph 27 of the Complaint.

28. Defendants deny each and every allegation contained in paragraph 28 of the Complaint.

29. Defendants deny each and every allegation contained in paragraph 29 of the Complaint.

30. Defendants deny each and every allegation contained in paragraph 30 of the Complaint.

(ALLEGED) BACKGROUND FACTS

31. Defendants admit each and every allegation contained in paragraph 31 of the Complaint.

32. Defendants admit each and every allegation contained in paragraph 32 of the Complaint.

33. Defendants deny each and every allegation contained in paragraph 33 of the Complaint.

34. Defendants deny each and every allegation contained in paragraph 34 of the Complaint.

35. Defendants deny each and every allegation contained in paragraph 35 of the Complaint.

36. Defendants deny each and every allegation contained in paragraph 36 of the Complaint.

37. Defendants deny each and every allegation contained in paragraph 37 of the Complaint.

38. Defendants deny each and every allegation contained in paragraph 38 of the Complaint.

39. Defendants deny each and every allegation contained in paragraph 39 of the Complaint.

40. Defendants deny each and every allegation contained in paragraph 40 of the Complaint.

41. Defendants deny each and every allegation contained in paragraph 41 of the Complaint.

42. Defendants deny each and every allegation contained in paragraph 42 of the Complaint.

43. Defendants deny each and every allegation as stated in paragraph 43 of the Complaint.

44. Defendants deny each and every allegation as stated in paragraph 44 of the Complaint.

45. Defendants deny each and every allegation contained in paragraph 45 of the Complaint.

46. Defendants deny each and every allegation contained in paragraph 46 of the Complaint.

47. Defendants deny each and every allegation contained in paragraph 47 of the Complaint.

48. Defendants deny each and every allegation contained in paragraph 48 of the Complaint.

49. Defendants deny each and every allegation contained in paragraph 49 of the Complaint.

50. Defendants deny each and every allegation contained in paragraph 50 of the Complaint.

51. Defendants deny each and every allegation contained in paragraph 51 of the Complaint.

52. Defendants deny each and every allegation contained in paragraph 52 of the Complaint.

FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS
Minimum Wage Violations of the FLSA

53. Defendants repeat, reallege, and incorporate herein by reference each and every one of the answers contained in the paragraphs above.

54. The allegations contained in paragraph 54 of the Complaint set forth legal conclusions to which no response is required, and to the extent a further response is deemed necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 54 of the Complaint and therefore deny the same.

55. Defendants deny each and every allegation contained in paragraph 55 of the Complaint.

56. Defendants deny each and every allegation contained in paragraph 56 of the Complaint.

57. Defendants deny each and every allegation contained in paragraph 57 of the Complaint.

58. Defendants deny each and every allegation contained in paragraph 58 of the Complaint.

59. Defendants deny each and every allegation contained in paragraph 59 of the Complaint.

SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS

Minimum Wage Violations of the NYLL and NYCCRR

60. Defendants repeat, reallege, and incorporate herein by reference each and every one of the answers contained in the paragraphs above.

61. The allegations contained in paragraph 61 of the Complaint set forth legal conclusions to which no response is required, and to the extent a further response is deemed necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 61 of the Complaint and therefore deny the same.

62. Defendants deny each and every allegation contained in paragraph 62 of the Complaint.

63. Defendants deny each and every allegation contained in paragraph 63 of the Complaint.

64. Defendants deny each and every allegation contained in paragraph 64 of the Complaint.

65. Defendants deny each and every allegation contained in paragraph 65 of the Complaint.

66. Defendants deny each and every allegation contained in paragraph 66 of the Complaint.

THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS

Tip Appropriation in Violation of the NYLL

67. Defendants repeat, reallege, and incorporate herein by reference each and every one of the answers contained in the paragraphs above.

68. Defendants deny each and every allegation contained in paragraph 68 of the Complaint.

69. Defendants deny each and every allegation contained in paragraph 69 of the Complaint.

70. Defendants deny each and every allegation contained in paragraph 70 of the Complaint.

FOURTH CLAIM FOR RELIEF AGAINST DEFENDANTS

Conversion

71. Defendants repeat, reallege, and incorporate herein by reference each and every one of the answers contained in the paragraphs above.

72. Defendants deny each and every allegation contained in paragraph 72 of the Complaint.

73. Defendants deny each and every allegation contained in paragraph 73 of the Complaint.

74. Defendants deny each and every allegation contained in paragraph 74 of the Complaint.

75. Defendants deny each and every allegation contained in paragraph 75 of the Complaint.

FIFTH CLAIM FOR RELIEF AGAINST DEFENDANTS

Failure to Furnish Proper Wage Statements in Violation of the NYLL

76. Defendants repeat, reallege, and incorporate herein by reference each and every one of the answers contained in the paragraphs above.

77. The allegations contained in paragraph 77 of the Complaint set forth legal conclusions to which no response is required, and to the extent a further response is deemed necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 77 of the Complaint and therefore deny the same.

78. Defendants deny each and every allegation contained in paragraph 78 of the Complaint.

79. Defendants deny each and every allegation contained in paragraph 79 of the Complaint.

80. Defendants deny each and every allegation contained in paragraph 80 of the Complaint.

SIXTH CLAIM FOR RELIEF AGAINST DEFENDANTS
Failure to Furnish Annual Wage Notices in Violation of the NYLL

81. Defendants repeat, reallege, and incorporate herein by reference each and every one of the answers contained in the paragraphs above.

82. The allegations contained in paragraph 81 of the Complaint set forth legal conclusions to which no response is required, and to the extent a further response is deemed necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 81 of the Complaint and therefore deny the same.

83. Defendants deny each and every allegation contained in paragraph 83 of the Complaint.

84. Defendants deny each and every allegation contained in paragraph 84 of the Complaint.

85. Defendants deny each and every allegation contained in paragraph 85 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Court lacks personal jurisdiction over the Defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, by the applicable statutes of limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, by the doctrine of waiver.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, by the doctrine of estoppel.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, by the doctrine of laches.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred, in whole or in part, by the doctrine of unclean hands.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint must be dismissed in their entirety as Plaintiff was paid all wages to which they were due under applicable federal and New York State law.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

The Plaintiff did not work for the Defendants during the periods alleged in the Complaint.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

The claims asserted in the Complaint are barred and must be dismissed because any injury or damages allegedly suffered by the Plaintiffs were not caused by the acts or omissions of the Defendants and/or are not the types of injuries or damages for which the Fair Labor Standards Act or the New York State Labor Law provide a remedy.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

To the extent Plaintiffs have received other benefits and/or awards attributable to an injury for which they seek compensation in this case, such benefits and/or awards should offset, in whole or in part, any award they receive here for the same injury.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

Plaintiff lacks standing to prosecute the claims purported to be alleged in the Complaint.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

The Complaint, and each claim purported to be alleged therein, is barred to the extent the Court lacks subject matter jurisdiction over the stated claims.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff is barred, in whole or in part, from recovering any damages because they failed to take reasonable actions to mitigate their alleged damages, if any.

AS AND FOR FIFTEENTH AFFIRMATIVE DEFENSE

Defendants, at all times, acted in good faith and with reasonable grounds for believing that they were not in violation of any provision of the Fair Labor Standards Act or the New York Labor Law and, therefore, among other things, no liquidated or punitive damages should be awarded in this case.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

Defendants have not acted in reckless disregard of the Fair Labor Standards Act and have not engaged in any willful violation of the Fair Labor Standards Act and, therefore, only a two year statute of limitation should be applied to the purported claims asserted under the Fair Labor Standards Act.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

The Court should not exercise supplemental jurisdiction over the claims in the Complaint that purportedly arise under the New York Labor Law.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the *de minimus* doctrine.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

Section 4 of the Portal-to-Portal Act, 29 U.S.C. § 254, bars Plaintiff's claim, in whole or in part, for all hours during which he was engaged in activities which were preliminary or postliminary to his principal activities or incidental to them.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

This action may not be maintained as a collective action because Plaintiff is not similarly situated to or an otherwise adequate representative for the persons who he purports to represent.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

This action may not be maintained as a class action because the proposed class does not meet the requirements of the Federal Rules of Civil Procedure 23.

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

That Defendant Brannons Sandwich shop LLC's annual gross revenue was less than \$500,000.00 and therefore the Court lacks Jurisdiction over the Defendant Brannons Sandwich Shop LLC.

RESERVATION OF RIGHTS

Defendants hereby reserve their right to bring any and all other counterclaims that they may maintain against Plaintiffs, including without limitation, counterclaims arising out of the same transaction(s) set forth herein, to the extent discovery in this action or further investigation reveals such further counterclaims.

WHEREFORE, Defendants respectfully request that this Court:

- A. Dismiss Plaintiffs' Complaint in its entirety, with prejudice;
- B. Deny each and every request for relief contained in Plaintiffs' Complaint;
- C. Award Defendants their reasonable attorneys' fees and costs of suit; and
- D. Award Defendants any such other and further relief this Court deems just and proper.

Dated: Astoria, New York

November 3, 2014

SACCO & FILLAS, LLP

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